

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
HELENA DIVISION**

ERIC JASON FARLEY
ADC #121579

PLAINTIFF

V.

2:05CV00334 SWW/HDY

SGT. HICKEY, East Arkansas Regional Unit, Arkansas
Department of Correction

DEFENDANTS

PROPOSED FINDINGS & RECOMMENDATION

INSTRUCTIONS

The following recommended disposition has been sent to United States District Court Judge Susan Webber Wright. Any party may serve and file written objections to this recommendation. Objections should be specific and should include the factual or legal basis for the objection. If the objection is to a factual finding, specifically identify that finding and the evidence that supports your objection. An original and one copy of your objections must be received in the office of the United States District Court Clerk no later than eleven (11) days from the date of the findings and recommendations. The copy will be furnished to the opposing party. Failure to file timely objections may result in waiver of the right to appeal questions of fact.

If you are objecting to the recommendation and also desire to submit new, different, or additional evidence, and to have a hearing for this purpose before the District Judge, you must, at the same time that you file your written objections, include the following:

1. Why the record made before the Magistrate Judge is inadequate.

2. Why the evidence proffered at the hearing before the District Judge (if such a hearing is granted) was not offered at the hearing before the Magistrate Judge.
3. The detail of any testimony desired to be introduced at the hearing before the District Judge in the form of an offer of proof, and a copy, or the original, of any documentary or other non-testimonial evidence desired to be introduced at the hearing before the District Judge.

From this submission, the District Judge will determine the necessity for an additional evidentiary hearing, either before the Magistrate Judge or before the District Judge.

Mail your objections and "Statement of Necessity" to:

Clerk, United States District Court
Eastern District of Arkansas
600 West Capitol Avenue, Suite 402
Little Rock, AR 72201-3325

DISPOSITION

A hearing was held in this case before the Court on September 18, 2007. The sole remaining Defendant in this case, Calvin Hickey, was served with notice of the action against him on May 3, 2006 (docket entry #19). He failed to file an Answer or otherwise respond to this action, and an entry of default was entered against him on May 30, 2006 (docket entry #39). The recent hearing was scheduled to consider the issue of damages, and Defendant received notice of the hearing. *See* docket note, May 30, 2007. However, he failed to appear for the hearing. Following a presentation of testimony by the Plaintiff, and submission of exhibits, the Court enters the following findings and recommendation.

Plaintiff, who is in the custody of the Arkansas Department of Correction and housed at the East Arkansas Regional Unit, was escorted back to his cell from visitation by Defendant Hickey on May 17, 2005. Plaintiff was shackled and cuffed, and a leather strap leashed him between the cuffs and shackles. Defendant Hickey apparently became enraged at Plaintiff, grabbing him by the cuffs and pushing him into walls and up the stairs to his cell, where he then beat Plaintiff about the head and body with a metal stick. Plaintiff suffered shoulder injuries as a result of having his arms twisted behind his back, and sustained large bruises along his sides and legs. He had knots on his head, had difficulty breathing, and ultimately required several weeks to fully heal. Plaintiff testified that his requests for medical attention were ignored, and that Defendant Hickey remained on the job in the barracks, threatening Plaintiff, when he filed a grievance about his injuries, saying that he "would get [him] again." Plaintiff continues to suffer from fear and feelings of helplessness as a result.

Based on Plaintiff's testimony regarding his injuries, the undersigned recommends that Plaintiff be awarded judgment against Defendant Hickey in the amount of \$7,000.00, for his damages, as well as attorney fees payable to his counsel, Mark Mason Derrick, in the amount of \$2,500.00.

Accordingly, IT IS, THEREFORE, RECOMMENDED that Plaintiff be awarded judgment against Defendant Hickey in the amount of \$7,000.00, and that his attorney, Mark Mason Derrick, be awarded attorney fees in the amount of \$2,500.00.

IT IS SO RECOMMENDED this 28 day of September, 2007.



UNITED STATES MAGISTRATE JUDGE